IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26-9-2007

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The Honourable Mr.Justice K. VENKATARAMAN

WRIT PETITION Nos.17914 to 17920 of 2003
and
connected WP.M.Ps.

The Commissioner,
Salem Municipal Corporation,
Salem. .. Petitioner in
all these WPs.

Vs.

P.Raman .. First respondent
in WP No.17914/07

K.R.Saravanan .. First respondent
in WP No.17915/07

V.Selvan .. First respondent
in WP No.17916/07

P.Kamaraj .. First respondent
in WP No.17917/07

M.Babushankar .. First respondent
in WP No.17918/07

G.Saravanakumar .. First respondent
in WP No.17919/07

C.Arivuchelvan .. First respondent
in WP No.17920/07

The Presiding Officer,
Labour Court,
Salem. .. 2nd Respondent in
all these WPs.

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records relating to the orders of the second respondent passed in I.D.Nos.268 to 274 of 1999 dated 10.1.2002 and quash the same.

For Petitioner : Mr.G.Sankaran,
Special Govt.Pleader

For Respondent-1 : Mr.S.Vaidyanathan
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O R D E R

The petitioner in all these Writ petitions, the Commissioner, Salem Municipal Corporation, Salem, has come forward with the present Writ Petitions challenging the awards passed by the second respondent-Labour Court, Salem made in I.D.Nos.268 to 274 of 1999 dated 10.1.2002 and for quashing the same.

2. The case of the petitioner-Corporation, as put forth by them in these Writ Petitions, is as follows:-
(a) The first respondents-workmen were engaged by the petitioner-Corporation as N.M.R. on daily rate basis, while there was requirement of manpower for removing encroachments made within the Corporation land. The first respondent-workmen were engaged only as and when there was requirement for carrying out some work. The first respondents were engaged only after 1.10.1996. After completion of the work, the engagement of the first respondents-workmen were dispensed with. Thus, the first respondents-workmen were employed only as N.M.R. on daily wage basis and their employment was not governed by any Rules nor they were appointed in any sanctioned post of the petitioner-Corporation.

(b) While that being so, the first respondents-workmen have filed petitions before the Labour Court, Salem under Section 2-A of the Industrial Disputes Act for their reinstatement into service. After receipt of notice in the said proceedings, the petitioner-Corporation has filed detailed counter affidavit negativing their claim and resisted the dispute. The matter was adjourned on several occasions. However, when the matter was taken up for hearing on 10.1.2002, due to the transfer of official concerned attending the Court, there was no representation on behalf of the Corporation and the Labour Court has passed the awards allowing the claim of the workmen with a further direction directing the petitioner-Corporation to reinstate them with back wages. Challenging the said awards, the present Writ Petitions have been filed by the petitioner-Corporation.

3. Counter affidavits have been filed by the first respondents-workmen in all these Writ petitions and the crux of the same is as follows:-
(a) The Writ Petitions are liable to dismissed since there is a delay of one and half years in filing the Writ petitions.
(b) The awards have been passed by the Labour Court based on finding of facts and on merits and the same cannot be interfered by this Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.
(c) The first respondents-workmen have completed their continuous service for 240 days in a period of 12 calendar months and 480 days of service in a period of less than 24 calendar months and as such, the said workers have deemed to have attained permanent status as per the Tamil Nadu Industrial Establishment (conferment of Permanent Status to Workman) Act, 1981.
(d) The Labour Court has considered all the aspects of the matter and passed the awards which do not require any modification.

4. On the above pleadings, Mr.G.Sankaran, the learned Special Government Pleader appearing for the petitioner, contended as follows:-
(i) The first respondents-workmen were engaged only after 1.10.1996. While so, the order passed by the Government in G.O.Ms.No.125, M.A.W.S. Department, dated 27.5.1999, wherein a list of persons employed prior to 1.10.1996 was called for by the Government in order to bring them into regular establishment. Therefore, since the first respondents-workmen were employed on daily rate basis after 1.10.1996, they cannot claim any benefit from and out of the said G.O.
(ii) The Labour Court has not considered the fact that the question of regularisation will arise only if a person is employed in a permanent post on temporary basis. It is a settled law that the regularisation of service arises only if a person is employed in the regular vacancy. However, since the first respondents-workmen are not employed in any of the post nor they were appointed through Employment Exchange, they are not entitled for the relief which they claimed before the Labour Court.
(iii) The Labour Court ought to have rejected the claim of the first respondents-employees and should have passed orders on merits even if there was no representation on the side of the petitioner-Corporation, taking into the counter filed by the Corporation.

5. Per contra, Mr.S.Vaidyanathan, the learned counsel appearing for the first respondents-workmen, contended as follows:-
(a) The Writ Petitions are liable to be dismissed on the sole ground that there is a delay of one and half years in filing the Writ Petitions.
(b) The Labour Court has considered the plea of the workers and passed the awards on merits and the same are liable to be confirmed.
(c) The petitioner-Corporation has not availed the opportunity before the Labour Court to establish its case and they cannot blame the Labour Court for passing orders on merits.

6. I have considered the arguments made by Mr.G.Sankaran, learned Special Government Pleader appearing for the petitioner-Corporation and Mr.S.Vaidyanathan, the learned counsel appearing for the first respondents-workmen.

7. It is an admitted case that exparte awards have been passed by the Labour Court which are being questioned in these Writ Petitions. Counter affidavits were filed by the Corporation in those proceedings before the Labour Court, disputing the claim made by the workmen. The Labour Court in its orders has held that even though it is stated in the counter affidavit that the first respondents-workmen were working only as daily rated casual labourers and they have not worked continuously for one year, such allegations were neither proved nor even attempted to be proved by the Corporation. It is useful to refer the award passed by the Labour Court which is a short order and the same reads as follows:-
"Petition dated 31.5.1999 under Section 2A(2) of the Industrial Disputes Act to reinstate the petitioner into service with full backwages with continuity of service along with costs.
(2) Petitioner is present and examined as PW1. Ex.P1 to P3 marked. Averments of petition and deposition of PW1 perused. Exhibits also are perused. Eventhough it is stated in counter that the petitioner was working only as a daily rated casual labourer and this petitioner has not worked continuously for one year, such allegations are neither proved nor even attempted to be proved by the respondent. In spite of opportunities given to respondent, respondent has chosen to be exparte. So the averments and allegations of respondent stand unproved. At the same time, petitioner has stated in his oral evidence and in petition that he has worked continuously for one year i.e. more than 240 days continuously in one year. There is no reason to unbelieve his evidence. Under these circumstances, oral termination without charge, without domestic enquiry, without notice is illegal as Section 25F is not complied with. Claim proved. Award is passed directing the respondent to reinstate the petitioner into service with backwages. Respondent is further ordered to pay Rs.500/-

as costs to petitioner."

8. The Labour Court thus while passing the awards seem to have taken, two things in favour of the workmen. Firstly, the petitioner-corporation has not established that the workmen were engaged only as N.M.R. and that they have not worked continually for one year. Secondly, the oral evidence adduced by the workmen that they were working continuously for one year, (i.e.) more than 240 days continuously in one year need not be disbelieved. I am unable to countenance such reason for allowing the claim of the workmen. The reason being that the workmen who have come forward before the Labour Court pleading that they have been continuously working for more than 240 days in a year, 480 days in two years, have to establish the same by adducing acceptable evidence. It is not for the petitioner-Corporation to establish the same. Furthermore, the oral evidence adduced by the workmen alone may not be sufficient to come to the conclusion in their favour. They should have filed some acceptable documentary evidence to prove their case. But, unfortunately, the Labour Court has failed in both. Had the petitioner-Corporation not filed any counter, the Presiding Officer of the Labour Court would have been justified in passing the said order. But, counter has been filed by the petitioner-corporation before the Labour Court in those proceedings and the Presiding Officer of the Labour Court should have considered the counter, in the absence of any evidence on the side of the Corporation. But, unfortunately, this has not been done.

9. In the decision reported in 1998 (I) L.L.J. 923 (TAMIL NADU HOUSING BOARD v. THE PRESIDING OFFICER, II ADDITIONAL LABOUR COURT, MADRAS), the Division Bench of this Court had an occasion to deal with similar type of matter and the relevant passage found in paragraph 6 of the said decision is extracted as follows:-

"Thus, from the aforesaid award, it is clear that the Labour Court has not considered the evidence on record. Even though the appellant remained absent, nevertheless, there was evidence on record. There were the statements of the case pleaded by the petitioner and the respondent. The Labour Court was required to consider and give reasons for passing the award in favour of the 2nd respondent-workman. As no such reason is given, not even the facts of the case are stated, the award cannot at all be considered to be a speaking order, as such, it cannot be sustained. The Presiding Officer is an Officer of the District Judge grade. He should not have decided the dispute in such a manner. There is no judicial application of mind of the Presiding Officer of the Labour Court. Such exercise of jurisdiction causes great and incalculable damage to the parties and also to the administration of justice. The Presiding officer would do better, if he discontinues such a habit of disposal of cases."

10. Though the learned counsel appearing for the first respondents/workmen has contended that there is a delay of one and half years in approaching this Court to set aside the awards and cited a decision for the same, I am unable to accept the said contention of the learned counsel appearing for the first respondents/workmen for the following reasons.

11. Firstly, the Corporation has assigned reason why the matter could not be represented on the hearing date, namely, 10.1.2002 that due to transfer of official concerned attending the Court, there is no representation on behalf of the petitioner-Corporation. Secondly, counter has been filed to the claim made by the workmen which has not been considered by the Labour Court. Thirdly, the Labour Court wrongly has placed the burden of proof on the Corporation, in stead of on the workmen to establish that they were working continuously. Fourthly, the Labour Court has merely accepted the evidence of the workmen without any proof. Fifthly, all the workmen in these Writ petitions have been given backwages in pursuance of the awards.

12. Considering the entire facts and circumstances of the case, I am constrained to set aside the

awards of the Labour Court, Salem made in I.D.Nos.268 to 274 of 1999 dated 10.1.2002 and remand the same to the concerned Labour Court. The Writ Petitions are therefore allowed. The Labour Court, Salem shall restore the I.D.Nos.268 to 274 of 1999 on its file and the petitioner-Corporation and the first respondents-workmen shall appear before the Labour Court, Salem on 15.10.2007. The Labour Court, Salem shall try and decide the same on merits within three months from the date of receipt of copy of the order. Consequently, the connected WP.MPs. are closed. No costs.

26-9-2007

Index : Yes
Internet : Yes
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To

The Presiding Officer,
Labour Court,
Salem.
K.VENKATARAMAN,J
dpp

Order in
W.P.Nos.17914 to 17920 of 2003;&
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